SUPREME COURT, U. S.

FILED

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IN THE

Supreme Court Of The United States

October Term, 1967

No. 469

COASTAL PETROLEUM COMPANY, A Florida corporation,
Petitioner,

v.

CLAUDE R. KIRK, JR., Governor of the State of Florida; TOM ADAMS, Secretary of State; EARL FAIRCLOTH, Attorney General; FRED O. DICKINSON, JR., State Comptroller; BROWARD WILLIAMS, State Treasurer; FLOYD T. CHRISTIAN, Superintendent of Public Instruction; DOYLE CONNER, Commissioner of Agriculture, as and constituting the TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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ARGUMENT

The Attorney General of Florida, undersigned, opposes the Petition for Writ of Certiorari to the Supreme Court of Florida in this cause, and would show:

There is no constitutional question involved.

The Circuit Court of the Second Judicial Circuit in Leon County, Florida, (the Court of original jurisdiction) by its final decree, specified exactly what the question involved in the case then being tried before him was, in this language:

> "The present litigation requires a determination of the territorial scope of the lease numbered 224-B, specifically as to whether or not it embraces Lake Hancock, a meandered body of navigable inland water in Polk County, the bottom of which is admittedly sovereignty lands."

(Please refer to Appendix 14a of Petitioner's Brief.)

The able Circuit Judge, correctly we think, discussed the evidence before him, but he did note in his final decree that:

> "It is doubtful if the description in the lease is sufficiently indefinite to justify extrinsic evidence to aid in determining its meaning. But the Court has received evidence from both parties."

(Order of the Circuit Court, 19a, Appendix of Petitioner's Brief.)

The Circuit Judge's subsequent comment on the evidence was solely in the nature of a presentation of his reasoning in arriving at his conclusion and order that Lake Hancock was in truth and fact, contained within the property description specified in the several leases.

The appeal to the District Court of Appeal, First District of Florida, was taken by the Trustees of the Internal Improvement Fund. The Chief Judge of that Appellate Court, in the

opinion of the Court which reversed the Circuit Court, specifically, and we think conclusively, sounded the death knell of this Petition for Writ of Certiorari when he stated:

> "The sole question on this appeal is whether Lake Hancock was included within the terms of Drilling Lease No. 224-B as Modified.
>
> *Burns v. Coastal Petroleum Company,* 194 So. 2d 71. (Page 2a, Appendix of Appellant's Brief.)

Whatever was said thereafter by this Chief Judge of this First District Court of Appeal could only be considered as the Judge's reasoning that permitted the Court to arrive at its conclusion.

Patently, questions which are not presented, not litigated, not argued, or not decided, are not conclusive on the parties, and are not violative of any constitutional rights.

CONCLUSION

Respondents respectfully contend that no constitutional question is involved and that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

EARL FAIRCLOTH
Attorney General

T. T. TURNBULL
Assistant Attorney General

Counsel for Respondents

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have furnished a copy of the foregoing Brief in Opposition to Petition for Writ of Certiorari to the Supreme Court of Florida to counsel for the Petitioner, Honorable Frank Bezoni, P. O. Box 1531, Tampa, Florida, and, Honorable C. Dean Reasoner and Honorable E. Tillman Stirling, 800-17th Street, N. W., Washington, D. C., 20006, Attorneys at Law, by mail, this the ..... day of ....., 1967.

T. T. TURNBULL